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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 920 OF 2015

1. Rajendra Kanhayalal Rathor,
Age: 40 years, Occu: Agriculture,
R/o: Gadipura, Nanded
 2. Satish Rameshlal Rathor,
Age: 44 years, Occu: Agriculture,
R/o : Gadipura, Nanded
 3. Vinod Subhashchandra Rathor,
Age: 34 years, Occu: Agriculture,
R/o : Gadipura, Nanded
 4. Vishal Subhashchandra Rathor,
Age: 44 years, Occu: Agriculture,
R/o : Gadipura, Nanded
 5. Vinodsing Rajusing Rathor,
Age: 25 years, Occu: Agriculture,
R/o : Gadipura, Nanded
- ..PETITIONERS

VERSUS

The State of Maharashtra,
Through Police Station Incharge,
Police Station, Nanded Gramin,
District Nanded

..RESPONDENT

Mr S. S. Gangakhedkar, Advocate for petitionrs;
Mrs M. A. Deshpande, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th September, 2015

ORAL ORDER :

By the instant writ petition, the petitioners, who are accused in
Regular Criminal Case No.1119 of 2011, challenge the order dated 26th

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June, 2015, passed by Judicial Magistrate First Class, Nanded, below Exh.32, whereby their prayer for production of documents, i.e. photographs of the disputed site and confronting the same to the prosecution witness, during cross-examination, came to be turned down.

2. An application Exh.32 came to be filed by the petitioners, who are accused nos.1 to 5 in Regular Criminal Case No.1119 of 2011, seeking production of documents, i.e. photographs of the disputed site. According to them, as the prosecution witness, i.e. complainant is under cross-examination, they requested for referring the photographs of the disputed site produced by them. The said request came to be rejected by the impugned order.

3. Learned Counsel appearing on behalf of the petitioners submits that the reason, for which the request was rejected, appears to be incorrect, as not in tune with the scheme of section 313 of the Code of Criminal Procedure, as according to him, the Code of Criminal Procedure confers a right of cross-examination of the witness, provided the petitioners satisfy the requirement of sections 247 read with sec. 243 of the Code of Criminal Procedure.

4. Learned Addl. Public Prosecutor appearing on behalf of the respondent, while supporting the impugned order, would urge that the interest of the petitioners could be safeguarded by taking recourse to the provisions of Chapter XIX of the Code of Criminal Procedure.

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5. Having considered the rival submissions, it is noticed that while dealing with the right of the defence to adduce evidence, the said rights are dealt with in accordance with provisions of section 247 read with sec. 243 of the Code of Criminal Procedure. The said procedure is required to be taken recourse to, after recording of evidence of the prosecution. As such, the stage at which the petitioners moved the application Exh.32, in my opinion, is premature.

6. In view of above, in my opinion, it will be appropriate to reject the present writ petition, with liberty to the petitioners to take recourse to the provisions of section 247 read with sec. 243 of the Code of Criminal Procedure, at the time of recording of evidence of the parties.

7. With above observations and liberty, Criminal Writ Petition stands rejected.

(N.W. SAMBRE, J.)

amj